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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

THE FIRST NATIONAL BANK, ALBUQUERQUE, NEW
MEXICO, A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT

The Solicitor General, on behalf of the United States, respectfully prays that a writ of certiorari be issued to review the judgment entered in the above-entitled cause by the United States Circuit Court of Appeals for the Tenth Circuit on November 2, 1942.

OPINIONS BELOW

The judgment of the District Court (R. 22) was entered without an opinion. The opinion of the Circuit Court of Appeals (R. 31-37) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 2, 1942. The jurisdiction

of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Respondent, the presenting bank, received payment from the United States on a check which had been issued as a loan on a Veteran's adjusted service certificate, and upon which the payee's endorsement was forged. Respondent guaranteed prior endorsements. Does the so-called imposter rule apply to prevent recovery by the United States?

STATUTES AND REGULATIONS INVOLVED

The applicable portions of the statutes and of the regulations involved are set forth in the Appendix, *infra*, pp. 15-30.

STATEMENT

The United States brought suit to recover the amount paid by the Treasurer of the United States on a check upon which the endorsement of the payee named therein had been forged and the genuineness of the endorsement had been guaranteed by the respondent, the First National Bank, Albuquerque, New Mexico (R. 5-8). At the close of the pleadings the United States moved for judgment on the pleadings (R. 12) and, on the assumption that there was no dispute as to the facts and that the only questions involved were ones of law, it submitted proposed findings of fact and conclusions of law which were denied by the Dis-

trict Court (R. 15-18), which in turn entered its own findings of fact and conclusions of law denying the motion of the United States for judgment on the pleadings (R. 18-21). The respondent thereupon moved for judgment on the pleadings, relying on the findings which the Court had theretofore made (R. 21). Its motion was granted and judgment was entered dismissing the complaint with prejudice (R. 22). While the proceedings may have been somewhat irregular in form, in substance the matter was treated by the District Court and by the parties thereto as one involving motions for summary judgment and was conceded to be such in effect by both parties in the court below.

The facts are substantially as follows: Adjusted Service Certificate No. 1,351,921 was issued by the United States to one Harry T. Goulding, a veteran of the World War (R. 19). One Harry Wesley Ott obtained possession of the certificate apparently by theft and thereafter procured and filled out an application form for a loan on the certificate which contained as an integral part thereof a certification by a notary public of Bernalillo County, New Mexico, that the applicant was known to be the veteran named in the Adjusted Service Certificate and that the signature on the application was that of the veteran (R. 10, 11, Appendix, *infra*, pp. 18-19.) The applicable regulations of the Veterans' Administration provided that before a loan be made on the security of an adjusted service certifi-

cate the person applying therefor be identified as the one entitled to the certificate, by certain designated persons including, among others, any official authorized to administer oaths (Reg. No. 4699, Appendix B, *infra*). On or about April 7, 1936 Ott presented this application, together with the adjusted service certificate, at the Veterans Facility at Albuquerque, New Mexico,¹ though whether and to what extent he had personal dealings there does not appear from the record (R. 10, 19). The loan was approved and a check for the amount of the authorized loan, \$790.50, payable to the order of and addressed to Harry T. Goulding, El Fidel Hotel, Albuquerque, New Mexico, was placed in the mail. Ott, who had registered at that hotel under the name of Harry T. Goulding, received the check on April 7, 1936, and presented it to respondent for payment. An officer of respondent telephoned the notary public who had certified to the identity of the veteran and the notary stated that Ott was the man whom he had identified in the loan application (R. 19). Ott also exhibited to respondent's officers certain identifying documents the nature of which does not appear (R. 11) and

¹ The application for the loan and the certificate of identification are not included in the record. A copy of an application for loan and certificate was set forth below in the Appendix to the Brief and the court was requested to take judicial notice that a loan on an adjusted certificate could be obtained only through the execution of a similar document. The court below took judicial notice (R. 32) and it is assumed that this Court will do likewise.

respondent's officers paid Ott the proceeds of the check, believing that Ott in fact was Goulding (R. 11). Respondent endorsed the check guaranteeing prior endorsements, and forwarded it to the Denver branch of the Federal Reserve Bank of Kansas City, a fiscal agent of petitioner, where it was paid in the regular course of business (R. 6-7, 19). Notice of the forgery was given to the Veterans' Facility on April 13, 1937, and a demand for reclamation made on May 20, 1938, was refused by the bank (R. 19-20). On October 10, 1938, the bank was notified by the Federal Reserve Bank of Kansas City that the claim for reclamation "may be abandoned" (R. 20). On October 16, 1940, the demand for reclamation was renewed and was again rejected by the bank (R. 20). Suit was thereupon instituted against respondent in the United States District Court for the District of New Mexico.

The District Court concluded as a matter of law that there was no forgery and therefore no breach of guaranty (R. 20). It also concluded that the United States had been guilty of laches in failing to press its claim for recovery with reasonable diligence (R. 20.) It thereafter dismissed the complaint of the United States (R. 22). On appeal the Circuit Court of Appeals for the Tenth Circuit disapproved that part of the opinion of the District Court relating to laches of the United States, but it affirmed on the ground that the so-

called imposter rule is applicable to the United States, that the disbursing officer of the United States primarily intended the check to be payable to the order of the imposter, and that that intent may be imputed to the United States.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the imposter rule is applicable to a check of the United States.
2. In holding that the disbursing officer at the Veterans Facility at Albuquerque, New Mexico, did or intended to deliver or make payable the check to the order of the imposter rather than to the order of the veteran entitled to receive it.
3. In failing to hold that an intent on the part of an official of the Veterans Facility to make the check in question payable to the order of the imposter was unauthorized and beyond the scope of that official's authority.
4. In failing to hold that the United States cannot be estopped by the unauthorized acts or negligence of its agents and that all persons dealing with an agent of the United States or relying upon the agent's acts are chargeable with notice of the scope of the agent's authority.
5. In failing to hold that the respondent is liable to the United States for its breach of guaranty of the genuineness of its prior endorsements.
6. In failing to hold that the United States was entitled to recover the face value of the check to-

gether with interest thereon from the ninth day of April, 1936.

7. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The court below, following its prior opinion in *United States v. First National Bank of Prague*, 124 F. (2d) 484, held that the imposter rule, based upon a presumed intent on the part of the drawer of the check to have it paid primarily to the order of the imposter with whom the drawer was dealing rather than to the payee named in the check,² applied to a check of the United States. The court further held that the Veterans Facility at Albuquerque, and particularly the disbursing officer, intended that the person with whom it dealt³ and to whom it delivered the check was to be the payee thereof, and that the imposter's endorsement con-

² While the United States disagreed with the conclusion reached by the Court in the *Prague* case in that respect, it could not seek review by this Court because judgment had been entered in its favor on other grounds. The judgment was paid by the Prague Bank in due course.

³ Notwithstanding the assumption of the court below, there is nothing in the record to show that the imposter Ott applied in person to the Veterans Facility at Albuquerque, New Mexico, for the application or loan or, if he did, what dealings he had in respect of the loan with any employee or agent of the United States. In any event it is clear that the check was not delivered to him personally. It was addressed by mail to the veteran named in the certificate at a hotel address which had been given by the imposter. (R. 19). We do not regard these points as at all controlling.

veyed good title to the check and was not a forgery.⁴ We submit that the court below has incorrectly decided an important question of law relating to the rights and liabilities of the United States in respect of its negotiable paper in a manner inconsistent with a controlling decision of this Court and in conflict with the decisions of lower federal courts.

1. The decision below is in conflict with that of this Court in *United States v. National Exchange Bank of Providence*, 214 U. S. 302, and with that of the Circuit Court of Appeals for the Second Circuit in *United States v. Onondaga County Savings Bank*, 64 Fed. 703. In the *National Exchange Bank* case and the *Onondaga County Savings Bank* case imposters, who deceived Government officials as to their true identity, fraudulently procured the issuance and the delivery to them of pension checks payable to the order of persons presumably entitled thereto and forged the endorsements of the

⁴ The court below considered the question whether state or federal substantive law applied and concluded that the rights and liabilities of the United States in respect of the check did not depend upon local law except to the extent that the United States had consented to be bound thereby. It found it unnecessary to decide whether the United States had consented to be bound by New Mexico law, as the courts of that state had not passed upon the imposter rule. The question whether state or federal law controls the rights and liabilities of the United States in respect of its negotiable paper is now pending before this Court in *Clearfield Trust Company, et al. v. United States of America*, No. 490, this Term.

named payees.⁵ In both cases the United States was held entitled to recover from the cashing banks which had received payment from the United States. It is true that neither of these cases discussed the "impostor rule" as such, but factually they presented the same problem as is here involved. At the time the *Exchange Bank of Providence* case was decided, many cases involving the imposter rule were to be found in the reports,⁶ and

⁵ The voucher prepared for the issuance of a pension check contained identification provisions similar to those contained in the application for a loan employed by the Veterans' Administration. The officer before whom the voucher was to be executed was required to see that the correct post office address of the pensioner was inserted on the face and back of the voucher. He was required to examine the pension certificate and the pensioner was to be fully identified by him. A blank copy of the voucher taken from the record in this Court in the *Exchange Bank of Providence* case, No. 90, October Term, 1908, is, for the information of the Court, set forth in Appendix C, *infra*, pp. 25-30.

⁶ *Emporia National Bank v. Shotwell*, 35 Kans. 360 (1886); *Robertson v. Coleman*, 141 Mass. 231 (1886); *United States v. National Exchange Bank*, 45 Fed. 163 (C. C. E. D. Wisc. 1891); *Crippen, Lawrence & Co. v. American Nat'l. Bank*, 51 Mo. App. 508 (1892); *Meridian Nat'l. Bank v. First Nat'l. Bank of Shelbyville*, 7 Ind. App. 322 (1893); *Land Title & Trust Co. v. Bank*, 190 Pa. 236 (1900); *Hoffman v. American Exchange Nat. Bank* (Neb.), 96 N. W. 112 (1901); *Tolman v. American National Bank*, 22 R. I. 462 (1901); *First Nat. Bank v. American Ex. Nat. Bank*, 170 N. Y. 88 (1902). See the Brewster-Ames controversy (Brannan, *Negotiable Instrument Law*, 3d Ed., Appendix). The imposter rule has no counterpart in the English decisions and is one of recent origin. It is considered by some authorities to be an out-growth of the imposter rule in the law of sales. Williston, *Contracts* (Rev. Ed.) Sec. 1517.

it must be assumed that both court and counsel were familiar with it. The same observation also applies to the *Onondaga* case. It is implicit in both of these decisions that the imposter rule was considered not to apply to a check of the United States issued in payment of a pension.

The court below, while expressly recognizing that the *Exchange Bank of Providence* case reached an opposite result on analogous facts (R. 34), sought to treat that case as having been modified by subsequent decisions of this Court in *United States v. Chase National Bank*, 252 U. S. 485 and *United States v. National Exchange Bank of Baltimore*, 270 U. S. 527. Both of those cases, however, involved the extent to which the doctrine of *Price v. Neal*, 1 W. Black. 390, 3 Burr. 1354, applied to a check of the United States. The *Chase Bank* case held that under the rule of *Price v. Neal*, the United States was bound to know the signature of the drawer and that where the drawer and the payee were the same person and both signatures had been forged, the United States could not recover by limiting its claim to one based upon a forged endorsement. The *Exchange Bank of Baltimore* case, following generally the doctrine laid down by Mr. Justice Story in *Bank of the United States v. Bank of Georgia*, 10 Wheat. 333, concluded that the United States was in effect both the drawer and the drawee of a government check and was therefore chargeable with knowledge of the amount thereof.

as well as the signature of the drawer. The *Exchange Bank of Providence* case, however, presented no such questions.⁷ Accordingly, it is clear that the two decisions of this Court upon which the Circuit Court of Appeals rested its distinction do not modify the holding of the *Exchange Bank of Providence* case in any way.

No attempt was made by the Circuit Court of Appeals to distinguish the *Onondaga County Savings Bank* case. And the court recognized that two recent district court cases have refused to apply the imposter rule in suits by the United States to recover on the forged endorsement of a check issued as a loan upon a veteran's adjusted service certificate. *United States v. Canal Bank & Trust Co.*, 29 F. Supp. 605 (E. D. La.); *United States v. National City Bank*, 28 F. Supp. 144 (S. D. N. Y.)

2. The decision of the court below is also in substantial conflict with that of the Court of Appeals for the District of Columbia in *District National Bank v. Washington Loan & Trust Company*, 65 F. (2d) 831. While the United States was not a

⁷ The critical question before this Court in the *Exchange Bank of Providence* case was whether the right of the United States to recover payment made on a forged endorsement was conditioned on the giving of prompt notice of the discovery of the forgery. The statement of the court below (R. 34) that the *Exchange Bank of Providence* case "rested upon the question of whether the United States should be held to the rule that a drawer or the maker of a check should be held to know the genuineness of its own paper" is apt to be misleading.

party to that suit, the court there rejected an imposter argument similar to that advanced by respondent in the instant case. Where the drawer is the United States, even more compelling reasons exist for refusing to attribute to it an intent to make its check payable to the order of imposters.

Section 502 of the World War Adjusted Compensation Act of 1924 as amended, *infra*, p. 15, authorized the Veterans' Bureau to make statutory loans to veterans upon the security of their adjusted service certificates. Section 503 of the Act, *infra*, p. 16, provided that any negotiation, assignment or pledge of the certificate as security for a loan except as authorized was null and void, thus narrowing the potential uses to which the certificate could be put. For the purpose of carrying the Act into effect, the Veterans' Administration issued regulations (Appendix B, *infra*) which authorized any regional office to make a loan on the adjusted service certificate. They also provided that the loan could be made only to the veteran named in the certificate and that the person applying therefor must be identified by certain designated public officials or otherwise responsible persons to be the veteran named in the certificate which was pledged as security (Reg. 4699, Appendix B, *infra*). The regulations also specifically provided that no employee of the Finance Service in the central office or the finance activity of a field station could act as an identifying officer. This obviously resulted in removing from the jurisdiction of the disbursing

officer the right to determine whether the individual who was applying for a loan was in fact the veteran named in the certificate. When the meticulous care with which the Government surrounded the granting of a loan upon the certificate is considered, it is anomalous to suggest that the United States intended that any person presenting a certificate, irrespective of whether he was the veteran named therein, would be able to obtain good title to the check which the United States was issuing against the certificate. The appropriate statutes and regulations make it clear therefore that the United States intended the veteran named in the certificate and that veteran alone to be the payee of the check which constituted the loan. See *United States v. National City Bank*, 28 F. Supp. 144, 148-149 (S. D. N. Y.).⁸

⁸ The majority of the cases commonly cited in support of the imposter rule were cases where the imposter assumed a fictitious name rather than one having relation to the drawer's obligation. In this group of cases no objection can be taken to the action of a court in ascribing an intent to the drawer to have the check payable to the order of the person with whom he deals. *Forbes & King v. Espy, Heidelbach & Co.*, 21 Ohio State 474; *Meridian Nat'l Bank v. First Nat'l Bank of Shelbyville*, 7 Ind. App. 322; *Montgomery Garage Co. v. Manufacturers, &c., Co.*, 94 N. J. L. 152; *Milner v. First National Bank*, 38 Ga. App. 668; *Corinth Bank & Trust Co. v. Security National Bank*, 148 Tenn. 136; *Halsey v. Bank of New York & Trust Co.*, 270 N. Y. 134; *Sherman v. Corn Exchange Bank*, 91 App. Div. (N. Y.) 84; cf. *Robertson v. Coleman*, 141 Mass. 231; *Karoly Construction Co. v. Globe Savings Bank*, 64 Ill. App. 225.

3. The question is one of substantial importance. *United States v. National Exchange Bank*, 45 Fed. 163 (C. C. E. D. Wis.), which was decided in 1891, for years stood as the only case in which the imposter doctrine had been applied to a check of the United States. In recent years, however, a contrariety of views has arisen among lower federal courts as to the applicability of that rule to checks of the United States. Compare *United States v. National City Bank*, 28 F. Supp. 144 (S. D. N. Y.) and *United States v. Canal Bank & Trust Co.*, 29 F. Supp. 605 (E. D. La.) with *Security-First National Bank v. United States*, 103 F. (2d) 188 (C. C. A. 9) and *United States v. First National Bank & Trust Company*, 17 F. Supp. 611 (W. D. Okla.). Cases are constantly arising which involve the application of the so-called imposter rule to checks of the United States, and a number of such cases are now pending. The desirability of an authoritative ruling on the question by this Court is evident, particularly in the light of the fact that owing to the constantly increasing number of checks which the Government issues, an increasing number of cases involving the imposter question may be expected.

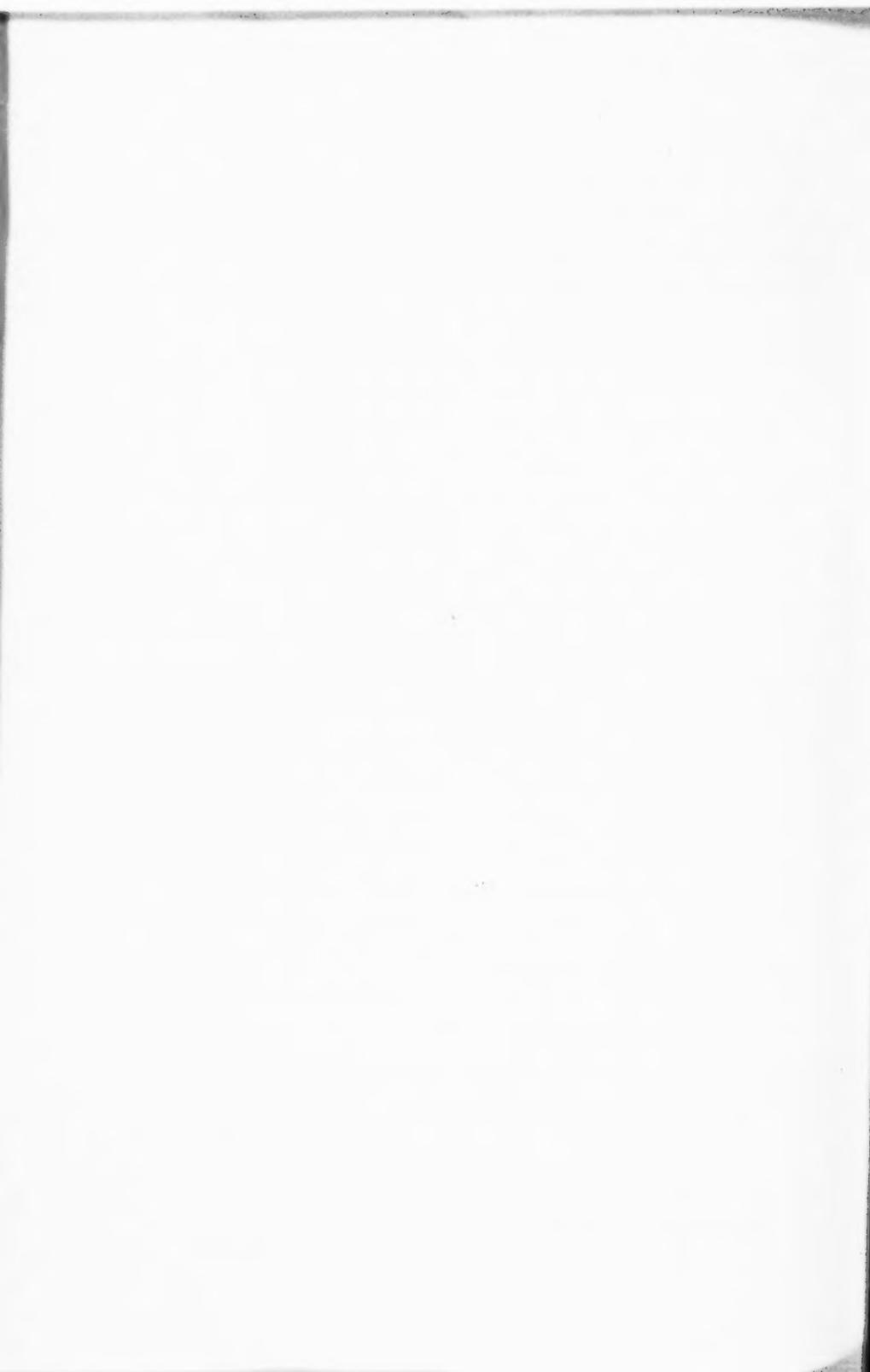
CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

FEBRUARY 1943.





APPENDIX A

STATUTES

The World War Adjusted Compensation Act as amended, c. 157, 43 Stat. 121, 126, 128; c. 751, 44 Stat. 826, 828; c. 359, 44 Stat. 1389 (38 U. S. C. 642, 643), provides in part as follows:

SEC. 502. (a) A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provisions of this section.

* * * * *

(i) The Administration of Veterans' Affairs is authorized, through such officers and at such regional offices, suboffices, and hospitals of the Veterans' Administration as he may designate, and out of the United States Government life insurance fund established by section 443 of this title, to make loans to veterans upon their adjusted-service certificates in the same amounts and upon the same terms and conditions as are applicable in the case of loans made under this section by a bank, and the provisions of this section shall be applicable to such loans; except that the rate of interest shall be 2 per centum per annum more than the rate charged at the date of the loan for the discount of ninety-day commercial paper under section 343 of Title 12 by the Federal reserve bank for the Federal reserve district in which is located the regional office, suboffice, or hospital of the Veterans' Administration at which the loan is made, but in no event shall the rate of interest exceed 6 per centum per annum.

SEC. 503. No certificate issued or right conferred under the provisions of Subchapter V of this chapter shall, except as provided in section 642 of this title, be negotiable or assignable or serve as security for a loan. Any negotiation, assignment, or loan made in violation of any provision of this section shall be held void. If any person is named as beneficiary by the veteran as a consideration for the making of a loan to the veteran by such person or any other person, such naming shall be void. Any person who accepts an assignment of a certificate or receives a certificate as security for a loan contrary to the provisions of Subchapter V of this chapter, or who makes a loan to a veteran in consideration of the naming by the veteran of such person or any other person as beneficiary, shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than \$500 or imprisoned not more than one year, or both.

APPENDIX B

Title 38, Code of Federal Regulations, Sections 15.4696-15.4700, provides (pp. 468-470):

15.4696. By whom loans may be made.—Loans are authorized to be made by the Veterans' Administration in central office, regional offices, facilities with regional office activities and Veterans' Administration offices located in the territorial possessions of the United States to any veteran, upon his promissory note secured by his adjusted service certificate, in any amount in even dollars not less than \$10 and not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate but at no time is the loan value less than 50 per centum of the face value.

15.4697. Certificates.—Adjusted service certificates are dated as of the 1st day of the month in which the applications were filed, but no certificates are dated prior to January 1, 1925. Loans may be made any time after the date of the certificate. The fact that a certificate is stamped or marked "duplicate" does not destroy its value as security for a loan.

15.4698. To whom loan may be made.—Only the veteran named in the certificate can lawfully obtain a loan on his adjusted service certificate and neither the beneficiary nor any other person than the veteran has any rights in this respect. The consent of the beneficiary is not required, the act providing

that a loan on the security of the certificate may be made with or without the consent of the beneficiary thereof.

15.4699. Identification.—Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification, if made in the United States or possessions, will be accepted if the certification is made by a United States postmaster or assistant postmaster over an impression of the post office cancelation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a member of the United States Senate or the House of Representatives, an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under section 500 of the World War Veterans' Act, 1924, as amended, or under § 35.10 or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia, or in a Federal judicial district, of the United States. If the identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A manager

of a Veterans' Administration facility is authorized to identify patients, members or employees of the facility over which he has charge. No identification will be made by any employee of the Veterans' Administration in his official capacity, other than by a manager of a facility as authorized above. However, such other employees of the Veterans' Administration as are specifically designated in writing to do so by the managers of regional offices, facilities or insular offices of the Veterans' Administration, or the head of an activity in central office, may identify applicants during official hours and upon the premises of the Veterans' Administration, such identifications by the employee so designated to be in his individual capacity and from his personal knowledge that the applicant is the person he claims to be. Official records on file with the Veterans' Administration may be used by the employee making such identification. No employee of the finance service in central office, or the finance activity of a field station of the Veterans' Administration will be so designated.

Any veteran whose adjusted service certificate is held by the Veterans' Administration as security for a loan made on a note properly signed by such veteran, may be identified by comparison of the handwriting of his signature on his previous note with his signature on his note submitted for an additional loan, and the execution of the certificate of identification required above, waived.

15.4700. *Form of note.*—The form of note used in making loans secured by adjusted service certificates shall follow Form 1185.

Title 31, Code of Federal Regulations, Sections 202.0, 202.32-202.34 provides:

Section 202.0. Introductory.—The regulations in this part apply to the Treasurer of the United States, Federal Reserve banks and branches, member bank depositaries, special depositaries of public moneys, collectors of internal revenue, collectors of customs, receivers of public moneys, marshals and clerks of courts, all other officers or agents of the United States engaged in collecting, depositing, or transmitting public moneys, and others concerned.

* * * *

202.32. Government checks and warrants; payment by Federal Reserve banks and branches.—Federal Reserve banks and branches will make arrangements to cash Government checks and warrants drawn on the Treasurer of the United States for disbursing officers of the War Department and Navy Department, and other Government officers, provided that satisfactory identification of the officers shall be furnished. The Treasurer will upon special request advise Federal Reserve banks and branches as to whether the balances to the credit of disbursing officers are sufficient for payment of the checks presented. Each Federal Reserve bank and branch will cash Government checks and warrants drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible incorporated banks and trust companies who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Checks and

warrants cashed by Federal Reserve banks and branches shall be charged to the account of the Treasurer of the United States, subject to examination and payment by the Treasurer. Federal Reserve banks and branches will not be expected to cash Government checks and warrants presented direct to the bank by the general public.

202.33. Government checks and warrants; payment by member bank depositaries.— Each member bank depositary with a fixed balance to the credit of the Treasurer of the United States will cash Government checks and warrants drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible holders who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Checks and warrants so cashed may be charged to the account of the Treasurer of the United States, subject to examination and payment by the Treasurer. Member bank depositaries are not required, however, to charge Government checks and warrants cashed by them in the account of the Treasurer of the United States, except in special cases where checks drawn on the Treasurer of the United States are deposited for the official credit of the drawer or the credit of other Government officers in the account of the Treasurer of the United States. When Government disbursing officers present official checks to member bank depositaries to be cashed, the Treasurer of the United States upon special request will advise such depositaries as to whether the balances to the credit of the disbursing officers are sufficient for the payment of the checks presented.

202.34. Government checks and warrants; payment by Treasurer.—The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government checks and warrants cashed by Federal Reserve banks and branches and member bank depositaries, and to refuse payment thereon. The Treasurer will handle all such items received by him on the following basis:

(a) Immediate return will be made of any check or warrant, payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination, in all of which cases the transit account of the remitting bank will be charged with the amount of the returned check or warrant and the remitting bank will be expected to give immediate credit therefor in the Treasurer's account; but if the original check or warrant is required for use in connection with a criminal investigation or legal proceeding, the original will be retained for that purpose and a photographic copy of the face and back will be forwarded to the remitting bank in lieu of the original.

(b) In the event that any check or warrant which has been paid by the Treasurer is subsequently found to bear a forged indorsement, or to bear any other material alteration or defect which was not discovered upon first examination, a photographic copy of the check or warrant will be forwarded to the remitting bank and its transit account will be charged with the amount by the Treasurer. The remitting bank, if a member bank depositary, will be expected to give immediate credit therefor in the Treasurer's ac-

count; if a Federal Reserve bank or branch, it will be expected to demand restitution at once from its prior indorser or indorsers, to maintain a close follow-up on its demand, and to give credit in the Treasurer's account when reimbursement has been made. In the case of checks paid more than a year before reclamation is requested of the presenting bank, the Treasurer may, in his discretion, treat the item as a collection instead of charging the presenting bank's account, with the understanding that no rights of the Government as to ultimate recovery are waived thereby.

(c) In cases of checks or warrants raised or bearing a forged signature of the drawer, not discovered upon first examination by the Treasurer, and in other cases where the Treasurer's right to reclaim is in question, the checks or warrants will be forwarded to the remitting bank as collection items and taken up by the Treasurer when credited, with no intermediate charge in the account of the remitting bank. A photographic copy may be returned in lieu of the original if the latter is required for use in connection with a criminal investigation or legal proceeding.

In any case arising under this section in which a Federal Reserve bank or branch is unable to secure restitution within a reasonable length of time, the facts should be reported to the Treasurer of the United States in order that appropriate action may be taken by him.

After the expiration of 1 year following the close of the fiscal year (ending June 30) in which they are drawn, checks drawn on the Treasurer of the United States are not payable by him but should be transmitted to

the Secretary of the Treasury, Division of Bookkeeping and Warrants, for payment from the "Outstanding Liabilities" appropriation, accompanied by an application for payment over the signature and address of the owner of such checks: Provided, however, That the 1-year restriction does not apply to checks issued on account of public debt obligations and checks issued on account of transactions regarding the administration of banking and currency laws.

APPENDIX C

Army Voucher No. -----.

INVALID.

June, 1903

\$-----.

Return this voucher for payment to A. J. Hoitt,
U. S. pension agent, Boston, Mass.

STATE OF -----, *County of -----, ss:*

I, -----, clerk of the
----- Court of the county and State aforesaid, do hereby certify that -----
is -----, duly commissioned and qualified,
and that he has authority to administer oaths for
general purposes; that his commission was dated on
the ----- day of -----, 1---, and
will expire on the ----- day of -----,
190--, and that his signature within written is
genuine.

Given under my hand and the seal of said court
this ----- day of -----, 190--.

-----, *Clerk.*

*Instructions to officer before whom this voucher is
executed.*

The magistrate must carefully compare this
voucher with the pension certificate exhibited to
him.

Vouchers may be executed before any officer au-
thorized to administer oaths for general purposes.

If he has a seal and is required by law to use it to authenticate his official acts, it must be affixed; if not, a certificate of the proper officer, showing the commencement and termination of his term of office, and his signature, must be filed in this agency. Vouchers may also be executed before fourth-class postmasters, their mailing stamps to be used as seals.

The officer will also see that the correct post-office address of the pensioner is inserted in face and in back of voucher, giving street and number (when so designated). He will also give his own post-office address after his official title on face of voucher.

No checks will be sent in care of any person.

The officer will be held strictly responsible for the correctness of his certificate of identity of pensioner, in every particular, pursuant to act of July 7, 1898.

Write name and P. O. address plainly here.

Name, -----; street,
-----; city or village, -----;
county, -----; State, -----
3-1000

Roll No. -----

Unless the instructions on face and back of this voucher are specifically followed the voucher will be returned for correction.

A "A"

INVALID.

A

Be it known, that I, -----, do solemnly swear that I am the identical person named in pension certificate No. ____, dated the _____ day of _____, 1_____, in my possession, and now exhibited; that I served in Company

----- Regiment, ----- Volunteers; that my name is inscribed on the rolls of the Boston Agency, at the rate of ----- dollars per month -----; when there is a change in the rate, either by an increase, reissue, etc., note the former rate at which paid -----.

That I have not been employed or paid in the Army, Navy, or Marine of the United States from the ¹ 4 day of Mar., 1903, to the present time; that I am entitled to the pension described in this voucher; that I have not forfeited my right, title, or interest therein; and that my present post-office address is No. -----, ----- street,

(Street and number should be given)

county of -----, State of -----.

(Pensioner's signature.) -----

(Signature must be written letter for
letter as it is written in the pension
certificate)

(If pensioner signs by mark, or illegibly, two
witnesses who can write.)

Officer must make the contents of the affidavit
fully known to the pensioner before signing or
swearing.

The pension certificate must be exhibited to the
magistrate when this voucher is executed.

STATE OF -----, County of -----, ss:

Subscribed and sworn to before me this -----
day of -----, 190--, and I certify that the
pensioner, above named, has this day exhibited to
me his pension certificate, above described, and was

¹ If the first payment, insert the date of the commencement of the pension. If not the first payment, the date from which the payment is claimed.

fully identified as the pensioner named therein, and that he signed the following duplicate receipts in my presence.

(Magistrate's signature.)-----

(Official character.)-----

(P. O. address.)-----

(The magistrate must certify to any erasures or alterations.)

United States Veterans Bureau

Form 1185

February, 1931

VETERAN'S NOTE

(Read instructions on reverse of note)

(Place—Give location of Station making the loan)

I hereby apply for the full loan value of my adjusted service certificate, or the amount entered in blank below. In consideration of the loan made, I promise to pay to the order of the Director, United States Veterans Bureau, one year after date of check issued, and at the place named above, the amount of the loan with interest after date of such check at the rate fixed by law until paid. If the principal and interest of this note are not paid at its maturity, I agree to the automatic extension of the note from year to year for periods of one year in the amount of the principal plus interest to the end of the immediately preceding expired loan year, which total amount shall automatically become a new principal each year, and shall bear interest at the rate fixed by law until paid.

As collateral security for the payment of the obligation herein assumed by me, I have de-

livered to and do hereby pledge with the holder of this note my adjusted service certificate No. _____, dated _____, further identified by No. A_____. If there is any part of the obligation herein assumed, whether principal or interest, unpaid at the date fixed for the maturity of said certificate, or at the date of death of the maker of this note, should he die before the date fixed for the maturity of said certificate, the amount of such indebtedness shall be deducted from the amount otherwise due the beneficiary under said certificate and the amount so deducted shall be paid to the holder of this note.

Do not write in this space unless you desire less than your full loan value, \$_____. If a prior loan is outstanding, only the difference is payable.

SIGN
HERE-----
(Signature of veteran)

Name of veteran-----
Street address
or route number-----
City or town and State-----

CERTIFICATE OF IDENTIFICATION

This certificate need not be executed if adjusted service certificate is held by this Bureau for a previous loan unless the note is signed by mark, in which case the certificate must be executed and the signature must be witnessed by at least one additional witness whose address must be given.

(NOTE.—Certificate should be executed by the Postmaster of the community in which the veteran lives, or by an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under Section 500 of the World

War Veterans Act, or an officer, over his official title, of the state or national body of such organization, or a notary public.)

STATE OF _____

COUNTY OF _____

Date _____, 19____

I, _____, do hereby
(Name of person certifying)
 certify that I am _____,
(Title of office or position)
 and that the person applying for loan evidenced
 by the above note is known to be the veteran named
 in the adjusted service certificate referred to
 therein and that the signature on the above note is
 the signature of such veteran.

 (If the person certifying is a notary, the above
 certificate must bear the notarial seal; if a post-
 master, an impression of the cancellation stamp
 of the postal station should be made on the above
 certificate.)

L. V. -----

Paid by check No. _____, dated _____,
 19____, for \$_____

Issued by _____ Symbol No. _____
(Give name of disbursing officer)

(For second or subsequent loans, notes must be
 sent to the office holding the Adjusted Service
 Certificate as security. See pink notice (Form
 1186-A or 1184-C) which is mailed with every loan
 check.)

15-375





No. 686

IN THE

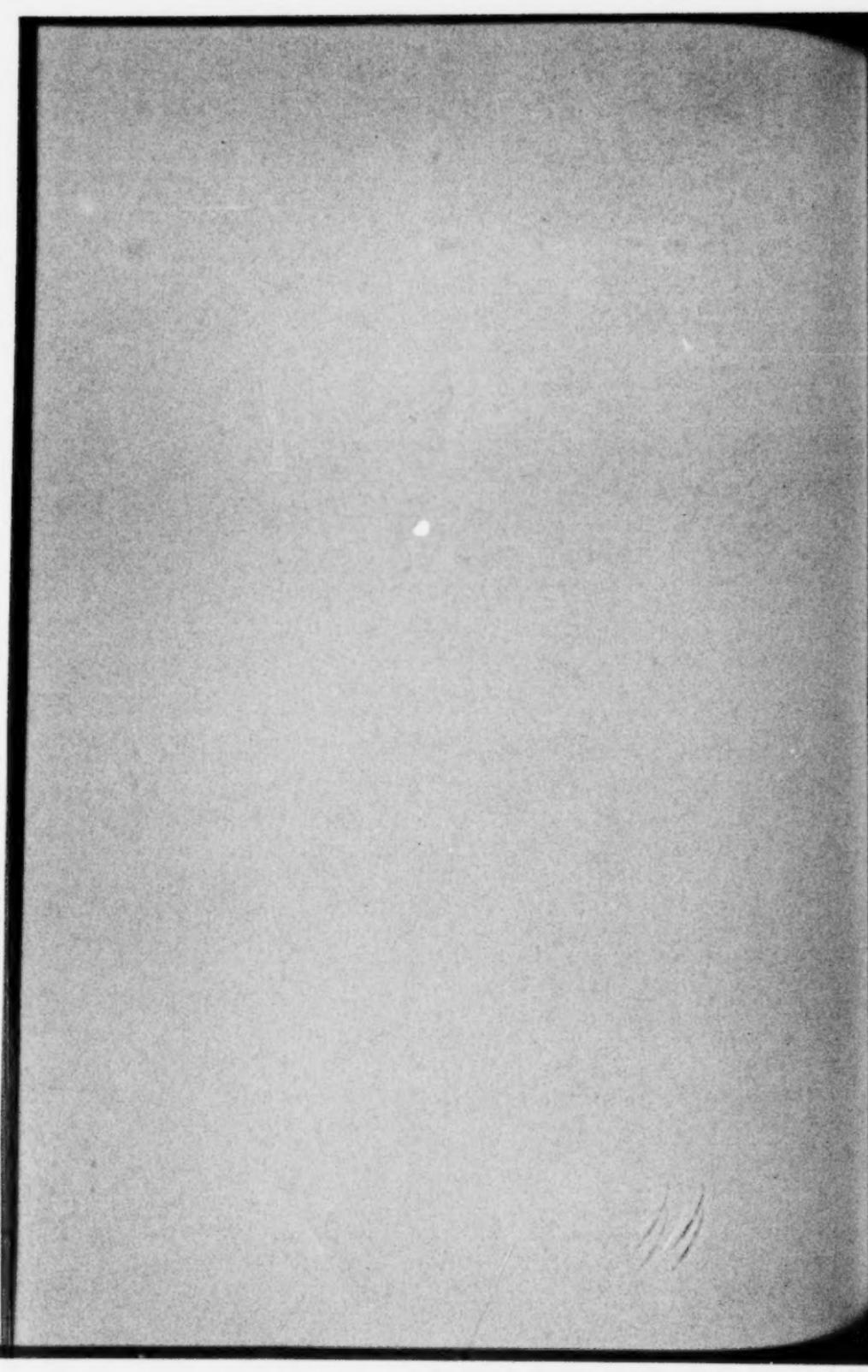
Supreme Court of the United States

October Term, 1940

UNITED STATES OF AMERICA, Petitioner,

THE FIRST NATIONAL BANK
Albuquerque, New Mexico, a Corporation,

**BRIEF OF RESPONDENT IN OPPOSITION
PETITION FOR WRIT OF CERTIORARI**



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IN THE
Supreme Court of the United States

October Term, 1942

No. 695

UNITED STATES OF AMERICA, *Petitioner*

v.

THE FIRST NATIONAL BANK,
Albuquerque, New Mexico, a Corporation

BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

OBJECTIONS TO STATEMENT OF QUESTION
PRESENTED AND STATEMENT OF THE FACTS

The respondent deems it unnecessary at this stage in the proceeding to attack the petitioner's statement of facts. It believes that the statements in the petition and the opinion below sufficiently illuminate the question here presented but respectfully reserves the right to correct inaccuracies or omissions upon plenary argument if that should become necessary. However, it should be noted that the form of words adopted in stating the "Question Presented," viz: "upon which the payee's endorsement was forged" (Petition p. 2) is obviously inaccurate and question-begging.

PETITIONER'S REASONS FOR GRANTING WRIT

Petitioner has advanced three reasons for the issuance of certiorari here, as follows:

- (1) Conflict with *U. S. v. National Exchange Bank of Providence*, 214 U. S. 302, and with *U. S. v. Onondaga County Savings Bank*, 64 F. 703, and apparently also with *U. S. v. Canal Bank & Trust Co.*, 29 F. S. 605 (E. D. La.) and *U. S. v. National City Bank*, 28 F. S. 144 (S.D.N.Y.)
- (2) Conflict with *District National Bank v. Washington Loan & Trust Co.*, 65 F. (2) 831.
- (3) Substantial importance of the question and apparent conflict of decisions upon it.

From the foregoing summary, it can be seen that the sole basis upon which certiorari is sought is a supposed conflict of decisions upon the question. If no real conflict exists, the petition should be denied. The respondent respectfully submits that an examination of the authorities will show not a conflict but rather an unusual degree of unanimity in cases of the present type. Without exception, all cases which *expressly* deal with the problem here presented support the Circuit Court's decision in this cause. To give an appearance of conflict, the petitioner has placed reliance upon cases readily distinguishable on their facts or upon cases where the decision was made without aversion to and in apparent ignorance of the settled legal principles which required the District Court's decision.

ARGUMENT

THERE IS NOT SUBSTANTIAL CONFLICT UPON THE APPLICABILITY OF THE IMPOSTOR RULE TO THE PRESENT CASE.

A. The petitioner's argument concedes that if the impostor rule is good law, and if it applies to negotiable instruments of the United States, the Circuit Court's decision is

correct. Accordingly, a determination of the authorities upon the impostor rule and upon its applicability to paper of the United States will virtually dispose of the present petition.

The impostor rule has been thus stated by the Tenth Circuit Court in its opinion below, quoting from its own decision in *U. S. v. First National Bank of Prague*, 124 F. (2) 484, 486-7:

"The impostor or fraudulent impersonation rule has been frequently considered in its application to a variety of facts. With few exceptions it is held that the drawer of a check, bill of exchange or other negotiable instrument, cannot recover from an intermediary bank on its endorsement, or from the payee bank upon its payment, where the check, bill or other instrument is drawn and delivered to the impostor under the mistaken belief on the part of the drawer that he is the person whose name he has assumed and to whose order the check, bill, or other instrument is made payable, and the intermediary bank acquires it from the impostor upon his endorsement thereon of the name of the payee, or the payee bank pays it upon such endorsement, as the case may be. Although not in full accord in respect of the reasons for their conclusions most courts hold that while the drawer acts in the mistaken belief that the person with whom he deals either in person or by correspondence is the person whose name he has assumed and pretends to be, still it is the intent of the drawer to make the check, bill or other instrument payable to the identical person with whom he deals and therefore to be paid on his endorsement; and that accordingly payment to him or his endorsee merely effectuates the intent of the drawer."

That the rule as thus stated is supported by overwhelming and unanimous authority is hardly debatable. Twenty cases were cited to the point by the Circuit Court in the *Prague* case and other authorities are numerous.

See Williston on Contracts, (Rev. Ed.) s. 1517B

Abel, The Impostor Payee, Wisconsin Law Review
Vol. 1940 pp. 161, 362

Annotations: 22 A.L.R. 1228
52 A.L.R. 1326
112 A.L.R. 1435

B. The decisions which deal expressly with the rights of the United States in the impostor rule situation are in accordance with the general rule above described.

U. S. v. First National Bank of Prague, 124 F. (2) 484 (C.C.A. 10)

That court specifically recognized the impostor rule as applicable and decided the case in favor of the United States only because the appellee bank's officers in that case had assisted in causing the loan check to be issued to the impostor in the first place.

Security - First National Bank v. U. S., 103 F. (2) 188 (C.C.A. 9)

U. S. v. First National Bank & Trust Co., 17 F. S. 611 (D. C. Okl.)

U. S. v. Citizens Union National Bank, 40 F. S. 609 (D. C. Ky.)

See also *U. S. v. National Exchange Bank*, 45 F. 163 (C. C. Wis.)

C. Not only the direct authorities just cited, but a further legal principle supported by authorities, which, so far as the respondent has been able to discover, are unanimous, support the Circuit Court's decision. As we have already pointed out the impostor rule is unshakeably established as a general principle applicable to the rights of private parties to commercial paper. Since this is true, it is applicable also to the rights of the United States on its commercial paper. For it is unquestionably the law that the rules of law affecting commercial paper apply to the United States and to commercial paper to which it is a party to the same extent as to the transactions of private persons.

The Floyd Acceptances, 7 Wall. 666,

"It must be taken as settled that when the United States becomes a party to what is called commercial paper . . . they are bound in any court, to whose jurisdiction they submit, by the same principles that govern individuals in their relations to such paper."

Cooke v. U. S., 91 U. S. 389

"It was conceded in the argument, that, when the United States become parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances. This is in accordance with the decisions of this court."

U. S. v. National Exchange Bank of Baltimore, 270 U. S. 527, 534-5

"The government attempts to escape from this conclusion . . . (that it could not recover money paid out on its own raised check to an innocent indorsee) . . . by the fact that the hand that drew and the hand that was to pay were not the same, and some language of Chief Justice White as to what it is reasonable to require the government to know in paying out millions of pension claims. The number of the present check was 48,218,587 . . . But the Chief Justice used that language only to fortify his conclusion that the United States could recover money paid upon a forged indorsement of a pension check. He cannot be understood to mean that great business houses are held to less responsibility than small ones. The United States does business on business terms . . . We are of the opinion that the United States is not excepted from the general rule by the largeness of its dealings and its having to employ agents to do what if done by a principal in person would leave no room for doubt."

U. S. v. Guaranty Trust Co., 293 U. S. 340, 350

"As against the United States, the rights of a holder of its checks drawn upon the Treasurer are the same as those accorded by commercial practice to the checks of private individuals."

D. We shall now consider the authorities cited by the petitioner as indicating a conflict of decisions.

U. S. v. National Exchange Bank of Providence, 214 U. S. 302, does not contain a sufficient recital of facts to determine whether a true impostor rule situation was presented. The entire decision is based upon the assumption that the payees' endorsements were forgeries (See Justice Holmes' reference to this point in *U. S. v. National Exchange Bank of Baltimore*, 270 U. S. 527, 534-5); and the decision is merely that the United States is not bound to know its payee's signatures under the doctrine of *Price v. Neal*. Compare *U. S. v Chase National Bank*, 252 U. S. 485. Since the doctrine of *Price v. Neal* really relates to the forgery of a *drawer's* signature, the rationale of this decision is doubly obscure. Moreover, not a word appears in the decision of the impostor rule and a study of it can leave no doubt, in spite of petitioner's 'assumption' to the contrary (Petition pp. 9-10) that the court was not addressing itself to the impostor rule problem if, indeed, one was presented. This decision cannot be regarded as indicating a substantial breach in the unanimity of decisions upon cases of the present type.

The second case relied upon by the petitioner as indicating a conflict of decisions is *U. S. v. Onondaga County Savings Bank*, 64. F. 703. This case is subject to the same criticism as the *National Exchange Bank* case just discussed. On its facts it may be inconsistent with the impostor rule, but this is not clear, and the opinion contains no reference to the impostor rule. The authority of both this case and of the *National Exchange Bank* case as applied to an impostor rule situation has been expressly denied upon facts essentially like those of the present case.

Security-First National Bank v. U. S., 103 F. (2) 188, 191

The third case relied upon by the petitioner in this connection is *U. S. v. Canal Bank & Trust Co.*, 29 F. S. 605 (E. D. La.) This case is really the only one squarely contrary to the Circuit Court's decision on its facts. But it contains no reference to the impostor rule nor indeed anything more per-

sulsive than a mere declaration of the result reached. The court says that the payee-veteran truly entitled had not indorsed the check, that the indorsement was therefore a forgery, and concludes that the United States could recover. In support there are cited three cases which have nothing to do with the impostor rule. Clearly this District Court decision does not constitute of itself a substantial conflict with the array of authorities supporting the Circuit Court's decision here.

The fourth case cited by petitioner to show a conflict of decisions is *U. S. v. National City Bank*, 28 F. S. 144 (S. D. N. Y.). This case is obviously distinguishable from the ordinary impostor rule cases like the present. Like *U. S. v. First National Bank of Prague*, 124 F. (2) 484 (C.C.A. 10) it presents a situation where the defendant bank (or rather its correspondent) had first contributed to the imposture and aided in causing the government to issue the bonus loan check in the first place. This circumstance, of course, entirely changes the rights of the parties as shown by the difference in the Tenth Circuit Court's decisions in the *Prague* case and the case at bar.

The last of the cases cited to this point by the petitioner is *District National Bank v. Washington Loan & Trust Co.*, 65 F. (2) 831 (D. C. App.). This is relied upon not as relating to the rights of the United States on commercial paper but as contrary to the impostor rule and as being therefore in substantial conflict with decisions following the rule (Petition pp. 11-12). The merest perusal of the case should dispel this contention. The case may have started out to be an impostor rule case but it ended quite otherwise. The rationale of the decision is clearly that the cashing bank was not misled by the imposture as in the usual impostor payee cases, like the present one. The court expressly pointed out that

"The miscarriage in the present case . . . resulted from

the neglect of the . . . (cashing bank) . . . rather than the neglect of the . . . (drawer)."

The case is not at all inconsistent with the impostor rule and lends no support to the supposed existence of a conflict upon that rule.

CONCLUSION

Upon the above consideration of the authorities, respondent submits that the Circuit Court's decision is right, that it accords with the overwhelming weight of state and Federal authorities and that no substantial conflict of decisions exists which would require or justify the issuance of certiorari here. The petition should be denied.

Respectfully submitted,

PEARCE C. RODEY,
Attorney for Respondent.

DON L. DICKASON,
FRANK M. MIMS,
of Counsel.

February, 1943.

